

**PLACER COUNTY SUPERIOR COURT  
CIVIL LAW AND MOTION TENTATIVE RULINGS  
FRIDAY, JUNE 25, 2020**

---

These are the tentative rulings for civil law and motion matters set at **8:30 a.m. on Friday, June 25, 2021**. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., Thursday, June 24, 2021**. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

---

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE MICHAEL W. JONES** and if oral argument is requested, it will be heard in **DEPARTMENT 4**, located at 101 Maple Street, Auburn, California.

---

**1. M-CV-0075642 Citizens Bank, N.A. vs. Gray, Robin, et al**

Application to Stay Execution of Judgment

Appearance required on June 25, 2021, at 8:30 a.m. in **Department 4**.

**2. M-CV-0079090 Patti M. Frisella, et al vs. Alioto, Frank J.**

Defendant's motion to quash service of summons is continued to July 8, 2021, at 8:30 a.m. in Department 42, to be heard by the Honorable Charles D. Wachob.

**3. S-CV-0042013 Morales, Allison vs. Van Duker, Cynthia**

Motion to Compel Discovery

Defendant's motion to compel discovery is denied. The proof of service attached to the motion indicates that it was served on former counsel for plaintiffs. The court also notes that meet and confer correspondence described in the motion, which was returned as undeliverable, was not mailed to plaintiffs' addresses of record as noted on the orders granting prior counsel's motions to be relieved as counsel. It is unclear how defendant has determined that plaintiffs' addresses of record are incorrect.

**4. S-CV-0042567 Bernadino Roofing, LLC vs. Lusk, Grace**

Motion for Substitution of Personal Representative of Deceased Defendant

Defendant's unopposed motion for substitution of Avalon Lusk, as personal representative for defendant Grace Lusk, as defendant's successor in interest in these proceedings pursuant to Code of Civil Procedure sections 377.10, *et seq.* is granted.

Petition to Confirm Arbitration Award

Respondent's request for judicial notice is granted. The court takes judicial notice of the fact that the cited exhibits are part of the court's file in this action.

The petition to confirm arbitration award is granted. The arbitration award, attachment 8(c) to the petition, is confirmed in its entirety.

The court finds that the dismissal of the complaint does not impact defendant's ability to file the petition to confirm arbitration award in this action. Venue is proper as the arbitration was held in Placer County. The petition is timely pursuant to Code of Civil Procedure section 1288. Respondent is precluded from arguing that the arbitrator exceeded his authority in issuing the award, as plaintiff did not petition to vacate or correct the award within 100 days. *Eternity Investments, Inc. v. Brown* (2007) 151 Cal.App.4th 739, 746. In any event, respondent does not demonstrate that the arbitrator exceeded his authority in awarding attorneys' fees.

Judgment shall be entered in favor of Avalon Lusk, as trustee of the Grace L. Lusk Revocable Trust dated July 14, 2001, and against respondent Bernadino Roofing, LLC, in the total amount of \$19,893.55, plus interest at the rate of ten percent (10%) per annum from March 12, 2020.

**5. S-CV-0043157 Sun City Lincoln Hills Comm. Ass'n vs. Eliseo, Ralph, et al**

Motion to Enforce Settlement Agreement

Plaintiff's request for judicial notice is granted.

Plaintiff's motion to enforce settlement agreement is granted. The parties to this action entered into a settlement agreement in December 2019, wherein defendants agreed to perform certain acts, including reconstruction of real property located at 1816 Stone House Lane, Lincoln, California ("the Property"), in accordance with approved plans, by no later than March 1, 2020. Plaintiff establishes that defendants have failed to perform their obligations under the terms of the settlement agreement.

Within 30 days, defendants shall complete reconstruction of the Property in accordance with the previously approved plans. In accordance with the terms of the parties' settlement agreement, defendants shall notify plaintiff's management staff in writing of

the completion of the work, and the parties shall proceed with the procedures outlined on page one, paragraph one (titled “Reconstruction of the Residence on the Lot”) of the settlement agreement.

Plaintiff is awarded attorneys’ fees of \$10,665, and costs of \$60, pursuant to paragraph 6(g) of the settlement agreement.

Judgment shall be entered in accordance with this order pursuant to Code of Civil Procedure section 664.6.

**6. S-CV-0044825 Mulligan, Eileen vs. Pleasant Grove Community Church**

Defendant’s motion for summary judgment is continued to July 9, 2021, at 8:30 a.m. in Department 3.

**7. S-CV-0045091 Shane Douglas DDS, PC, et al vs. Firegang, Inc.**

Motion to Stay Proceedings

Defendant’s request for judicial notice is granted.

Defendant’s motion to stay proceedings is granted.

As a preliminary matter, Code of Civil Procedure 410.30 is inapplicable in this case, as defendant has not requested that the court decline to exercise jurisdiction under the doctrine of *forum non conveniens*. See Code Civ. Proc. § 410.30(a), and Judicial Council Comment thereto. Nevertheless, the court has discretion to stay proceedings in cases where another action is pending involving the same parties and issues. *American Life Ins. Co. v. Stewart* (1937) 300 U.S. 203; *Farmland Irr. Co. v. Dopplmaier* (1957) 48 Cal.2d 208, 215. In this case, all parties except for plaintiff Shane Douglas DDS, PC, are also parties in a Washington state action which is currently on appeal. Further, the central issue of plaintiffs’ remaining claim in this action is also at issue in the Washington state action. Thus, the outcome of the Washington appeal may impact plaintiff’s claim and prayer for damages in the current action. For these reasons, the motion is granted.

**The court sets an order to show cause re: status of proceedings on December 13, 2021, at 3:30 p.m. in Department 40.**

**8. S-CV-0045155 Garcia, Alonso vs. Spartan Landscape Development, LLC**

The scheduled hearing is dropped as no moving papers were filed with the court.

**9. S-CV-0045829 Alford, Colleen vs. Roseville City School District, et al**

The petition to approve compromise of pending action of minor is granted as prayed. If oral argument is requested, appearance of the minor is excused.

**10. S-CV-0045933 Strategic Fund. Source vs. Gale, Angelo, Johnson & Pruett**

Defendants' motion to strike is continued to July 9, 2021, at 8:30 a.m. in Department 3.

**11. S-CV-0045975 Lea, Susan vs. Government Employees Insurance Company**

The demurrer to first amended complaint is continued to July 16, 2021, at 8:30 a.m. in Department 3.

**12. S-CV-0046143 Blevins, Michael vs. Keith Sherman Enterprises, Inc.**

The demurrer to complaint and motion to strike are dropped in light of the notice of settlement filed May 24, 2021.

**13. S-CV-0046155 Moinvasiri, David vs. Lennar Homes of California, Inc.**

The motion to recover service costs is continued to July 9, 2021, at 8:30 a.m. in Department 3.

**14. S-CV-0046337 Nguyen, Sylvia vs. American Honda Motor Co Inc., et al**

The demurrer to complaint is dropped in light of the dismissal of the action entered June 21, 2021.

**15. S-CV-0046359 Nolan, Debra vs. Reta, Daniel Troy, et al**

Motion to Strike

As a preliminary matter, defendants are advised that their notice of motion must include notice of the court's tentative ruling procedures. Local Rule 20.2.3(C).

Plaintiff's request for judicial notice is granted.

Defendants Daniel Troy Reta and Kristine Corothers move to strike punitive damages allegations set forth in plaintiff's complaint for personal injury and property damage arising from a motor vehicle accident. A motion to strike under Code of Civil Procedure section 436 lies against a claim for punitive damages where the facts alleged do not rise to the level of malice, fraud or oppression required to support such an award. *Turman v. Turning Point of Central Cal., Inc.* (2010) 191 Cal.App.4th 53, 63.

To support a prayer for punitive damages, plaintiff must allege ultimate facts supporting a finding of oppression, fraud or malice on the part of the defendant. Civil Code § 3294(a). Malice includes conduct which is intended by the defendant to cause injury to the plaintiff, or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. Civ. Code § 3294(c)(1). Oppression includes despicable conduct which subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. Civ. Code § 3294(c)(2). Fraud includes intentional misrepresentation, deceit or concealment of a material fact with the intention of depriving a person of property or legal rights or otherwise causing injury. Civ. Code § 3294(c)(3).

Based on the court's review of the complaint as a whole, plaintiff fails to allege sufficient facts to support punitive damages. Plaintiff alleges:

Defendant Daniel Troy Reta operated his vehicle while under the influence of alcohol or drugs in violation of Vehicle Code §23152 and 23153, despicable conduct which was carried on with conscious disregard for the rights and safety of others, including plaintiff.

(Complaint, p. 4, ¶MV-2(f).)

A finding of malice does not rest on ordinary negligence, or even grossly negligent or reckless conduct. *Lackner v. North* (2006) 135 Cal.App.4th 1188, 1210-1211. In cases involving conduct performed without the intent to harm, plaintiff must allege facts showing that defendant was aware of the probable dangerous consequences of his or her conduct, and willfully and deliberately failed to avoid those consequences. *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 895-896. In this case, the factual allegations of the complaint are conclusory and insufficient by themselves to establish oppression, fraud or malice. The court notes that factual statements made in the declaration of counsel cannot be considered in ruling on the motion. Code Civ. Proc. § 437.

Based on the foregoing, defendants' motion to strike the allegations and prayer for punitive damages in plaintiff's complaint is granted with leave to amend. Plaintiff shall file and serve any amended complaint on or before July 16, 2021.

**16. S-CV-0046491 Cal. State Labor Comm. vs. Am. & Canadian Group LLC**

Plaintiff's request for issuance of a preliminary injunction is denied without prejudice. The court notes that although a proposed order to show cause re: preliminary injunction and proposed amended order to show cause re: preliminary injunction have been lodged, the court's records do not reflect that any order to show cause has been issued or filed in this action, nor has notice of hearing been filed or served. The court's records also do not reflect that any application for issuance of order to show cause has been filed. Finally, the court notes that the proof of service of summons does not reflect service of the declaration of Kelsey Lim on defendant.

**17. S-CV-0046677 In re Petition of R.L.**

The petition to approve transfer of structured settlement payment rights was continued to August 6, 2021, at 8:30 a.m. in Department 3.

---